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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 368

THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND RAY L. CHESEBRO,

Appellants,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, AS THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP AND GORDON L. McDONOUGH, AS MEMBERS OF AND CONSTITUTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, AND EX OFFICIO THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

RAY L. CHESEBRO,
City Attorney;
FREDERICK VON SCHRADER,
WILLIAM H. NEAL,
BOURKE JONES,
Counsel for Appellants.

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Appellees.

STATEMENT AS TO JURISDICTION.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

The appellants, in support of the jurisdiction of the Supreme Court of the United States to review the above-entitled cause on appeal, respectfully represent:

A.

Statutory Provisions Sustaining Jurisdiction.

1. *Statutory Provisions.*

The statutory provisions believed to sustain the jurisdiction of the Supreme Court of the United States is Judicial Code, Section 237(a) [(28 U. S. C. A., § 344(a))], the relevant portions of which are as follows:

> "SEC. 237(a). A final judgment or decree in any suit in the highest court of the state in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. * * *"

Also, an Act of Congress, Jan. 31, 1928, c. 14 § 1, 45 Stat. 54 [28 U. S. Code, § 861 (a)], which provides that:

> "The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

And, also, an Act of Congress, Jan. 31, 1928, c. 14, § 2, 45 Stat. 54, as amended April 26, 1928, c. 440, 45 Stat. 466 [28 U. S. Code, §861(b)], which provides that:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which section 861a of this title substitutes for a writ of error."

B.

Statute of the State, the Validity of Which is Involved.

The statute of the State of California, the validity of which has been sustained by the Supreme Court of the State of California, the highest court of said State, as not being violative of or repugnant to the provisions of the Constitution and laws of the United States, is Chapter 642 of the Statutes of 1937, page 1763, which is as follows:

"CHAPTER 642.

An act to amend the 'Los Angeles County Flood Control Act,' by adding thereto a new section, to be numbered 13½, relating to the conveyance and transfer to such district of storm drain improvements, drainage improvements and drainage systems, for the assumption of liability for the payment of bonds of drainage districts issued for the construction of storm drain improvements, drainage improvements and drainage systems so conveyed and transferred, for the operation, maintenance, repair and improvement of such storm drain improvements, drainage improvements and drainage systems and the levy of a special tax therefor.

[Approved by the Governor June 29, 1937. In effect August 27, 1937.]

The people of the State of California do enact as follows:

SECTION 1. The 'Los Angeles County Flood Control Act' is hereby amended by adding thereto a new section, to be numbered 13½, and to read as follows:

SEC. 13½. The board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, may accept on behalf of said district a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drain-

age systems lying within the territorial limits of the flood control district and within any of the following described classes, to wit:

1. Those which were constructed under the jurisdiction, control or supervision of the board of supervisors of the county of Los Angeles, and which are under the jurisdiction of said board;

2. Those which were constructed by or for the county of Los Angeles or any drainage district within said county or by or for the Los Angeles County Flood Control District;

3. Those constructed pursuant to the provisions of an act entitled 'An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie,' approved March 21, 1903, as amended, and those which have been constructed pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, prior to January 1, 1937;

4. Those within any incorporated city, town or municipality of the county of Los Angeles whose legislative body has transferred and conveyed such storm drain improvements, drainage improvements or drainage systems to said flood control district pursuant to the provisions of any act of the State of California authorizing such transfer and conveyance.

Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, to pay the cost and expense of the construction of which bonds of any drainage improvement district have been issued, said flood control district shall thereupon be and become liable for the payment of the principal upon the bonds of such drainage improvement districts maturing subsequent to the date of such conveyance and upon the indebtedness of such drainage improvement district represented by interest coupons maturing subsequent to such date of transfer. The board of supervisors of the flood control district shall levy a special

tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall be levied and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose. The principal and interest on such drainage district bonds shall be paid from the county treasury of said county of Los Angeles in the manner provided by law for the payment of principal and interest on bonds of said county.

Whenever the board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, has accepted on behalf of said district a transfer and conveyance of the storm drain improvements, drainage improvements or drainage systems heretofore mentioned, then, upon the conveyance to said flood control district by any city, town or municipality within the territorial limits of said district by a four-fifths vote of its legislative body of any storm drain improvement, drainage improvement or drainage system constructed therein, it shall thereupon accept the same and from and after such transfer or conveyance to such flood control district by such city, town or municipality said flood control district shall be solely liable for the operation, maintenance, repair and improvement of such storm drain improvements, drainage improvements or drainage systems.

Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, said flood control district shall thereafter do all things necessary for the proper operation, maintenance, repair and improvement of any such storm drain improvements, drainage improvements or drainage systems.

The board of supervisors of the flood control district shall have power in any year to levy a special tax upon the taxable real property in said flood control district sufficient to pay the cost and expense of operating, maintaining, repairing and improving the storm drain improvements, drainage improvements or drainage systems so conveyed and transferred, which said tax shall be levied and collected at the same time and in the same manner as the general tax for county purposes, and the revenue derived from said tax shall be paid into the county treasury to the credit of said district and said board of supervisors shall have the power to control and order the expenditure thereof for said purposes. Taxes levied under authority of this section shall be separate and distinct from, and shall be in addition to the taxes authorized to be levied under section 14 of this act."

C.

Date of Judgment and Date of Application for Appeal.

The final judgment of the Supreme Court of the State of California sought to be reviewed was rendered on June 9, 1938, and, in accordance with Section 1 of Rule XXX of the Rules adopted by the Judicial Council of California regulating the business of the Supreme Court and the District Courts of Appeal, said judgment became final on July 10, 1938, and the application for appeal was presented to the Chief Justice of the Supreme Court of the State of California on August 3d, 1938.

D.

Nature of Case and Rulings of the Supreme Court of the State of California.

1. *General Nature of the Case.*

The case is an original proceeding instituted on January 31, 1938, by the City of Los Angeles, a municipal corpora-

tion of the State of California, and Ray L. Chesebro, an individual, before the Supreme Court of the State of California, for the issuance of its peremptory writ of mandate commanding the Los Angeles County Flood Control District and the Board of Supervisors of the County of Los Angeles and said Board as the Board of Supervisors of the Los Angeles County Flood Control District, and the individual members of said Board, "to levy assessments on behalf of the Los Angeles County Flood Control District upon the taxable real property within said district solely in accordance with the provisions of the Los Angeles County Flood Control Act prior to the addition thereto, by chapter 642 of the Statutes of 1937, of Section 13½," and to refrain from levying, on behalf of the Los Angeles County Flood Control District, any assessment for the payment of the principal upon the bonds, or the indebtedness represented by interest coupons of said bonds, or for the cost or expense of operating, maintaining, repairing or improving the storm drain improvements, drainage improvements or drainage systems or certain drainage districts of limited area lying within the Los Angeles County Flood Control District, two of which were organized under the provisions of the Statutes of 1903, page 354, and nine of which were organized under the provisions of the Drainage District Improvement Act of 1919 (Stats. 1919, page 731), which the respondents transferred and conveyed to the Los Angeles County Flood Control District on December 1, 1937.

The proceeding by way of mandamus was resorted to in order that the Supreme Court of California might take original jurisdiction of the cause. By stipulation, the issuance of an alternative writ of mandate was waived and the cause was submitted upon the petition and the demurrer of the respondents thereto and the briefs of the respective parties.

On June 9, 1938, the Supreme Court of California rendered its judgment in the cause, that "the peremptory writ is denied and the alternative writ is discharged." The petitioners filed a petition for rehearing within the time allowed by the rules of said court, to wit, on June 27, 1938, and the same was denied on July 8, 1938.

2. *The Petition for the Writ of Mandate.*

It is alleged, in paragraph I of the petition, that each of the petitioners is the owner of taxable real property situated within the Los Angeles County Flood Control District and within the corporate limits of the City of Los Angeles, and outside of the exterior boundaries of the drainage districts heretofore referred to. Then follow allegations enumerating the drainage districts and setting forth the action of the Board of Supervisors in making the transfer, as heretofore outlined, and that the bond redemption and interest requirements of the drainage districts formed under the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731) aggregate $4,234,001.25, and that the Board of Supervisors intend to levy annual special assessments against all real property situated within the Los Angeles County Flood Control District and outside the exterior boundaries of said drainage districts, including the real property of petitioners, sufficient to meet the outstanding obligations incurred for said works and improvements.

It is alleged, in paragraph VII of the petition:

> "That the levy of such special assessments described in paragraph VI will be illegal and void, in that it will be a special assessment levied against the property situated in one special assessment district to pay the debts and obligations of other special assessment districts, without regard to the accrual of benefits to the lands assessed, and will be a gift of public funds, in violation of the provisions of section 31 of article IV of the Constitution of the State of California; that the levy of said

special assessments will deprive petitioners of their property without due process of law and will deny to petitioners the equal protection of the laws, in violation of the provisions of article V and article XIV of the amendments to the Constitution of the United States and section 13 of article I of the Constitution of the State of California."

It is then alleged that petitioners have no plain, speedy and adequate remedy at law and that all the owners of taxable real property in the Los Angeles County Flood Control District and said drainage districts are the parties interested in the proceeding.

3. *The Demurrer.*

The respondents demurred generally, upon the ground that the petition did not state facts sufficient to constitute a cause of action upon which the writ sought by the petition could be issued.

4. *Rulings of the Court.*

In rendering judgment denying the issuance of a peremptory writ of mandate, the Supreme Court stated, in the opinion attached hereto, that:

"This proceeding in mandamus presents the question of the constitutionality of section 13½ of the Los Angeles County Flood Control District Act added to the Statute in 1937 (Stats. 1937, p. 1763). The original statute is found in the statutes of 1915 at page 1502.

"* * * In the course of the proceedings accepting the transfer the board did not expressly make a finding of the necessity or usefulness of such property for any of the purposes of the flood control district, nor was any hearing ordered or had on the question of such usefulness or necessity. The terms of the conveyance and acceptance provided for the transfer to the flood control district of funds on hand in the several drainage districts and for the assumption by the flood control district of the obligation to pay the principal

and interest remaining unpaid on all outstanding bonds, issued by such districts to cover the cost of the improvements conveyed, maturing subsequent to the date of the conveyance or transfer. The petition discloses an intent on the part of the board of supervisors to proceed pursuant to the power vested in it by said section 13½.

"• • • It is alleged and claimed by the petitioners that such special levy on lands within the flood control district but outside of the drainage districts whose obligations would be affected thereby is illegal and void because, so it is urged, it would be a special assessment levied against property without regard to the accrual of benefits to the lands assessed, and therefore would be a denial of due process and the equal protection of the laws enjoined by the state and federal constitutions. The petitioners seek to employ the remedy here invoked to restrain the assessment contemplated by the board on lands outside the drainage districts. The alternative writ issued.

"Questions of law only are involved.—They are presented by a demurrer interposed on behalf of the respondents.

"• • •

"The petitioners contend that inasmuch as the legislature in enacting section 13½ did not expressly find that drainage improvements constructed within the Los Angeles county flood control district are beneficial or useful to the lands in the district, and did not provide the means for a hearing and a finding in that respect by a designated body, an assessment levied on lands within the flood control district and outside the drainage districts to meet any part of the cost of such improvements constitutes a deprivation of due process of law. • • •

"• • • By designating in section 13½ the particular property which may be acquired by the flood control district it must be presumed that the legislature concluded that the entire flood control district would be so benefited by the use of the designated drainage im-

provements in the larger and broader program of the flood control act. * * * This particularity of description of the improvements and property authorized to be accepted by the district presupposes a prior inquiry and investigation on the part of the legislature and a finding by it that such designated improvements will be useful for the purposes of the district and beneficial to the territory comprising the flood control district. * * * In the matter of the acquisition of the property described in section 13½ the legislature has itself decided the usefulness of the property to the purposes of the flood control district. Section 13½, together with the enactment of a general statute on the same subject (Stats. 1937, p. 1761), evidences the adoption by the legislature of a comprehensive program of drainage and flood control in the various counties to be carried out by flood control districts, rather than divided among counties, drainage districts and flood control districts.

"* * *

"The following language from the case of *Los Angeles County Flood Control District* v. *Hamilton*, 177 Cal. 119, 124-125, might well be held applicable in disposing of the petitioners' contention herein:

" 'The mere passage of the act, then, must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The findings thus implied are as fully effective as if declared in express terms in the act itself. * * *.' * * *

"* * * The result in that case has been obviated here by the action of the legislature declaring in effect that the lands so to be burdened have been or will be benefited by the transfer of the specified property. * * *"

5. *Grounds Upon Which It is Contended the Questions Involved Are Substantial.*

I.

A drainage district has the special purpose of the improvement of particular property and when it is so formed as to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation.

Myles Salt Co. v. *Board of Commissioners*, 239 U. S. 478.

II.

Where the fixing of the boundaries of a special assessment district is left to the Board of Supervisors, it is essential that property owners whose property is to be assessed shall be given a hearing upon the question as to whether or not their lands would be benefited by the proposed improvement and also a hearing upon the amount of the assessment, and any statute purporting to make the order of the board conclusive upon the property owner without such hearing is violative of both State and Federal constitutions.

Fallbrook Irr. Dist. v. *Bradley*, 164 U. S. 112;
Londoner v. *City and County of Denver*, 210 U. S. 373;
Browning v. *Hooper*, 269 U. S. 396;
Embree v. *Kansas City etc. Road District*, 240 U. S. 242;
Turner v. *Wade*, 254 U. S. 64;
Coe v. *Armour Fertilizer Works*, 237 U. S. 413.

A) The Los Angeles County Flood Control District is a special assessment district as distinguished from a taxing district.

Los Angeles County Flood Control District v. *Hamilton*, 177 Cal. 119.

III.

In so far as the transfer of the drainage districts to the Flood Control District is concerned, there has been no legislative action fixing the boundaries of the district to be assessed for the cost of the improvements.

A) Leaving the transfer of drainage districts to the Flood Control District at the discretion of the Board of Supervisors does not constitute a legislative act of making such a transfer if or when the Board of Supervisors elect to make the transfer.

See

Stanley v. *Jeffries*, 86 Mont. 114;
Amos v. *Mathews*, 99 Fla. 1, 65, 115.

B) Nor could a transfer under such circumstances be considered as supported by the presumption of a legislative finding of benefits to the lands burdened by such transfer as it is the act of the Board of Supervisors and not the legislature.

Miller & Lux v. *Board of Supervisors*, 189 Cal. 254.

IV.

The property authorized to be transferred to the Los Angeles County Flood Control District is not by its nature calculated to be of benefit to the Flood Control District.

A) The drainage districts in question were formed by the Board of Supervisors upon petition of landowners within limited areas of the Flood Control District subsequent to the formation of the Flood Control District by the legislature and the validity of Drainage District No. 1 was upheld in *Van de Water* v. *Pridham*, 33 Cal. App. 252, on the theory that the drainage district served a purpose different from that of the Flood Control District and was formed to take care of the peculiar needs of a local area within the Flood

Control District. A like ruling was made upon similar grounds in *Moore* v. *Thornburg*, 208 Cal. 657, wherein the validity of an improvement district formed within the limits of an irrigation district was upheld.

B) The establishment of an assessment district is a declaration that the only lands which will be benefited by the proposed works are the lands within the district.

Moulton v. *Parks*, 64 Cal. 166.

V.

Special assessments levied without a determination of special benefit to the land assessed are void.

Village of Norwood v. *Baker*, 172 U. S. 269.

VI.

The rights of the City of Los Angeles are such that they are within the protection of the Constitution of the United States.

A) The courts of California hold that the property of municipalities held for municipal purposes is invested with the security of private rights of individuals and the property right is of such nature as to be within the protection of the Constitution of the United States.

Grogan v. *City of San Francisco*, 18 Cal. 590, 613;

City of Beverly Hills v. *City of Los Angeles*, 175 Cal. 311, 314;

See, also:

Mt. Hope Cemetery v. *City of Boston*, 158 Mass. 509.

B) The Supreme Court of California, in the case at bar, recognized the right of the City of Los Angeles to urge the protection of the Constitution of the United States as grounds for the invalidity of the statute, and held that the statute did not violate the rights of the City protected by the Constitution of the United States. Under such circum-

stances, the Supreme Court of the United States will assume that the State may confer on a municipal corporation contract or property rights protected by the Federal Constitution against subsequent impairment by the State.

City of Boston v. *Jackson*, 260 U. S. 309.

C) The Supreme Court of the United States is bound by the decisions of the highest courts of the States as to the powers of their municipalities.

Railroad Commission of California v. *Los Angeles Ry. Corp.*, 280 U. S. 145.

D) Jurisdiction of the Supreme Court of the United States is not affected because the existence of the right for which constitutional protection is claimed depends upon State law.

Fox River Paper Co. v. *Railroad Com. of Wisconsin*, 274 U. S. 651.

E) The powers of the City of Los Angeles are not derived from the legislature but from a freeholders' charter directly provided for by the Constitution.

Los Angeles Gas & Elec. Corp. v. *City of Los Angeles*, 188 Cal. 307, 317.

F) *City of Trenton* v. *New Jersey*, 262 U. S. 937; *City of Pawhuska* v. *Pawhuska Oil & Gas Co.*, 250 U. S. 394, and similar cases distinguished. (In each of those cases the Supreme Court of the State had DENIED the existence of the right which the cities sought to have the Supreme Court protect; whereas in the case at bar the Supreme Court of the State recognizes the right of the City but denies that the statute abridges such right.)

E.

Cases Believed to Sustain the Jurisdiction of the Supreme Court of the United States.

The judgment is final.

State of Indiana v. *Brand* (decided U. S. Sup. Ct. Jan. 31, 1938), 82 L. Ed. Adv. Op. 444.

The court is one of last resort.

Hamilton v. *Regents of the University of California*, 293 U. S. 243.

Proceedings in mandamus is a suit.

Detroit & Mackinac Ry. Co. v. *Michigan R. R. Com.*, 240 U. S. 564.

Unconstitutionality of the statute was sufficiently raised and decided adversely to appellant's claim.

People etc. of New York ex rel. Bryant v. *Zimmerman*, 278 U. S. 63.

The Federal questions raised are substantial.

Hamilton v. *Regents of the University of California*, 293 U. S. 243.

It is not necessary to attack the validity of an entire statute.

Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282.

An appeal lies from original proceedings in highest court of State.

Hartman v. *Greenhow*, 102 U. S. 672.

F.

Stage in Proceedings and Method of Raising Federal Questions.

The case is an original proceeding in the Supreme Court of California. The Federal questions were raised in the petition for the issuance of the alternative writ of mandate, as set forth under subdivision 2 of Part D of this statement as to jurisdiction, and the Supreme Court of California, in its opinion (a copy of which is attached hereto), recognized that such questions were raised and decided them adversely to appellants, as set forth in subdivision 4 of Part D of this statement as to jurisdiction.

It is respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal by virtue of the statutory provisions set forth in Part A of this statement as to jurisdiction.

Respectfully submitted,

RAY L. CHESEBRO,
City Attorney;
FREDERICK VON SCHRADER,
Assistant City Attorney;
WILLIAM H. NEAL,
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BOURKE JONES,
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BOURKE JONES,
By FREDERICK VON SCHRADER,
Counsel for Appellant
Ray L. Chesebro.

EXHIBIT "A".

Decision of the Supreme Court of the State of California.

(Endorsed:) Filed June 9, 1938. B. Grant Taylor, Clerk, by Coultis, L. A. Deputy.

In Bank

S. F. No. 15990.

THE CITY OF LOS ANGELES, a Municipal Corporation, *et al.*, *Petitioners,*

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT *et al.*, *Respondents.*

This proceeding in mandamus presents the question of the constitutionality of section 13½ of the Los Angeles County Flood Control District Act added to the statute in 1937 (Stats. 1937, p. 1763). The original statute is found in the statutes of 1915 at page 1502.

The petitioners allege their ownership of lands situated and assessable within the Los Angeles County Flood Control District but outside the confines of certain named drainage districts within the flood control district. The petition shows that in December, 1937, the board of supervisors of Los Angeles county, acting as the board of supervisors of the flood control district, by resolution, accepted a transfer to the flood control district of the storm drain improvements, drainage improvements and drainage systems of drainage districts numbers 1 and 3, organized under the statute of 1903 (Stats. 1903, p. 354), and of drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26 and 29, organized under the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731), and amendatory acts. All of said drainage districts and drainage district improvements are located within the territory comprising the Los Angeles County Flood Control District. In the course of the proceedings accepting the transfer the board did not expressly

make a finding of the necessity or usefulness of such property for any of the purposes of the flood control district, nor was any hearing ordered or had on the question of such usefulness or necessity. The terms of the conveyance and acceptance provided for the transfer to the flood control district of funds on hand in the several drainage districts and for the assumption by the flood control district of the obligation to pay the principal and interest remaining unpaid on all outstanding bonds, issued by such districts to cover the cost of the improvements conveyed, maturing subsequent to the date of the conveyance or transfer. The petition discloses an intent on the part of the board of supervisors to proceed pursuant to the power vested in it by said section 13½.

It is alleged that the bond redemption and interest requirements of drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26, and 29 aggregate $4,234,001.25; but what proportion, if not all, of this amount represents obligations maturing subsequent to the date of transfer is not indicated. It is stated that the board of supervisors intends to levy annual special assessments upon all the real property within the flood control district sufficient to meet the outstanding obligations incurred for the drainage improvements accepted by the board. It is alleged and claimed by the petitioners that such special levy on lands within the flood control district but outside of the drainage districts whose obligations would be affected thereby is illegal and void because, so it is urged, it would be a special assessment levied against property without regard to the accrual of benefits to the lands assessed, and therefore would be a denial of due process and the equal protection of the laws enjoined by the state and federal Constitutions. The petitioners seek to employ the remedy here invoked to restrain the assessment contemplated by the board on lands outside the drainage districts. The alternative writ issued.

Questions of law only are involved. They are presented by a demurrer interposed on behalf of the respondents.

By section 13 of article XI of the state Constitution the legislature is given power "to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation dis-

tricts or drainage districts organized or existing under any law of this state". (Amendment adopted Nov. 3, 1914.)

The object and purposes of the Los Angeles Flood Control District Act were stated in section 2 to be: "to provide for the control of the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, all or any of such waters, and to protect from damage from such flood or storm waters the harbors, waterways, public highways and property in said district". By section 16 the board of supervisors was given the power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of the act; also to acquire either within or without the boundaries of the district, by purchase, condemnation, donation or by other lawful means, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations, or agencies, or districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of the act, and to compensate any private owner or reclamation or other district or agency for property taken over or acquired by the flood control district as a part of its work of control or conservation or protection.

Section 13½ added by Statutes of 1937 provides that the board of supervisors of the Los Angeles County Flood Control District, by a four-fifths vote may accept a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the flood control district and within certain described classes, including those constructed prior to January 1, 1937, pursuant to provisions of the 1903 and 1919 acts hereinabove mentioned. Said section 13½ also contained the following provisions: "Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, to pay the cost and expense of the construction of which bonds of any drainage improvement district have been issued, said flood control district shall thereupon be and

become liable for the payment of the principal upon the bonds of such drainage improvement district maturing subsequent to the date of such conveyance and upon the indebtedness of such drainage improvement district represented by interest coupons maturing subsequent to such date of transfer. The board of supervisors of the flood control district shall levy a special tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall be levied and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose."

It will be noted that neither section 16 nor section 13½ provides for a hearing prior to acquisition of any of the property described therein, and that section 16 alone expressly restricts the acquisition of property to that which is necessary or useful for the purposes of the district. It will also be noted, however, that section 16 does not refer to specific property, such as is described in section 13½. In other words, section 16 provides generally for the acquisition of such property as, in the opinion of the board of supervisors, may be necessary or useful to carry out the purposes of the flood control act. Section 13½, on the other hand, refers to the acceptance of a limited class of described property, namely, the specified storm drain improvements, drainage improvements, and drainage systems, which from the nature of such property indicates without any express declaration its relative usefulness for the purposes of the flood control district.

The petitioners contend that inasmuch as the legislature in enacting section 13½ did not expressly find that drainage improvements constructed within the Los Angeles County Flood Control District are beneficial or useful to the lands in the district, and did not provide the means for a hearing and a finding in that respect by a designated body, an assess-

ment levied on lands within the flood control district and outside the drainage districts to meet any part of the cost of such improvements constitutes a deprivation of due process of law. The contention, however, is necessarily grounded on the hypothesis that the drainage improvements are not *per se* useful for the purposes of the flood control district and therefore not beneficial to all the lands within that district, and that the absence of any legislative declaration of such benefit, or any provision for a hearing on the question of benefit to the lands affected, is fatal to the validity of the section.

To support their theory the petitioners argue that when the drainage districts were formed, especially the districts organized subsequent to the creation of the flood control district, they presumably included all of the territory which would be benefited by the respective drainage improvements, and that the omission from the districts of any surrounding area conclusively indicates that such area would not be benefited thereby. The petitioners rely generally on cases which hold that only the lands benefited may be assessed to pay the cost of such special improvements (*Spring St. Co.* v. *City of Los Angeles*, 170 Cal. 24, *A. T. and S. F. Railway Co.* v. *Reclamation Dist. No.* 404, 173 Cal. 91), and on cases holding that to permit assessments for special improvements without a legislative declaration of benefit to the lands assessed or a provision for a hearing and finding by a properly constituted body, is to deprive the owner of due process in violation of the state and federal Constitutions. (*Fallbrook Irrigation Dist.* v. *Bradley*, 164 U. S. 112; *Miller & Lux* v. *Board of Supervisors*, 189 Cal. 254.)

Nevertheless the petitioners correctly concede that if the legislature itself has found, either by designating the territory to comprise the district or by expressly so declaring, that the lands included or affected are benefited, such a finding presupposes appropriate and adequate inquiry and is conclusive upon the property owners in the district and upon the courts (*Fallbrook Irrigation Dist.* v. *Bradley*, *supra*; *People* v. *Sacramento Drainage Dist.*, 155 Cal. 373, 386; *Brookes* v. *City of Oakland*, 160 Cal. 423; *Miller & Lux* v. *Board of Supervisors*, *supra*); and in such case it is not essential that the benefits be realized in fact, if otherwise

there is any reasonable foundation for the finding of potential benefit. (*Board of Directors of Crawford County Levee Dist.* v. *Dunbar*, 107 Ark. 285, 155 S. W. 96.)

The petitioners point to the inclusion in section 16 of language specifying that lands or improvements within or without the district to be acquired pursuant to the authority of that section, must be such as will be necessary or useful for carrying out the purposes of the act, and to the absence of any such qualifying language in section 13½, as indicative of the invalidity of the latter section. The petitioners, however, have not fully appreciated the necessity for the inclusion of such qualifying language in section 16 and the reason for its omission from section 13½. As noted, section 16 confers the general power upon the board of supervisors to acquire such lands or works, wherever they may be situate, as may be necessary or useful for the purposes of the act. In contrast to that, by section 13½ the legislature itself has specified particular property which may be acquired by the flood control district. Flood control necessarily covers a much larger field and a broader program than one restricted merely to drainage of a specified area. It conceivably includes works or improvements which may be far removed from the lands which will be protected and benefited thereby. It is therefore within the legislative discretion to conclude that a system of drainage improvements, although initially employed to the direct beneficial use of a restricted area for drainage purposes, may be employed in conjunction with flood control facilities for the benefit of a much larger area. By designating in section 13½ the particular property which may be acquired by the flood control district it must be presumed that the legislature concluded that the entire flood control district would be so benefited by the use of the designated drainage improvements in the larger and broader program of the flood control act.

The petitioners do not question the propriety of a legislative finding that the designated improvements would be so beneficial. They complain of the absence of an express declaration in that regard. But from the import of section 13½ the legislature must be deemed to have exercised its plenary power to make such a finding. That section is not construed as granting a general power to the board

of supervisors to acquire properties for the use of the district. It is rather a special declaration that it may acquire on behalf of the flood control district certain designated properties, namely, drainage works and improvements and systems constructed prior to January 1, 1937, by certain classes of drainage districts within the flood control district. This particularity of description of the improvements and property authorized to be accepted by the district presupposes a prior inquiry and investigation on the part of the legislature and a finding by it that such designated improvements will be useful for the purposes of the district and beneficial to the territory comprising the flood control district. It is obvious therefore that sections 16 and 13½ have no necessary relation to each other. Nor is section 13½ inconsistent with section 4 of the act, which requires the board of supervisors to employ engineers to formulate the best plan for carrying out the purposes of the act. In the matter of the acquisition of the property described in section 13½ the legislature has itself decided the usefulness of the property to the purposes of the flood control district. Section 13½, together with the enactment of a general statute on the same subject (Stats. 1937, p. 1761), evidences the adoption by the legislature of a comprehensive program of drainage and flood control in the various counties to be carried out by flood control districts, rather than divided among counties, drainage districts and flood control districts.

The Constitution and the decisions do not preclude the carrying out of that program by the enactment of the legislation referred to. As pointed out in *Hadley* v. *Dague*, 130 Cal. 207, 220, the mode in which the expense is to be borne as well as the district which is to bear the expense and the manner of distributing the expense are legislative questions. It was there held that although the theory upon which the expense is charged to the land in the district is that the property has received a particular benefit, nevertheless the validity of the assessment does not depend upon the ability to show that the property received a benefit commensurate with the amount of the assessment, that is, that the benefit is identical with the burden. And quoting

from *Fallbrook Irrigation District* v. *Bradley, supra,* the court recognized that although the method of arriving at the amount of the burden may in some instances result in inequalities, that circumstance was "far from arising to the level of a constitutional problem, and far from the case of taking property without due process of law". The Hadley case referred to the case of *Lent* v. *Tillson,* 72 Cal. 428, and the statement therein that the benefits need not be immediate, but that the only just limitation, if any existed, with respect to assessing for such benefits, was that "a tax will not be upheld when the courts can plainly see that the legislature has not really exercised its judgment at all, or that manifestly and certainly no such benefit can or could reasonably have been expected to result. The judge should not place his mere opinion against that of the legislature."

The following language from the case of *Los Angeles County Flood Control District* v. *Hamilton,* 177 Cal. 119, 124-125, might well be held applicable in disposing of the petitioners' contention herein: "The mere passage of the act, then, must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The findings thus implied are as fully effective as if declared in express terms in the act itself. (*San Christina Inv. Co.* v. *San Francisco,* 167 Cal. 762, 769.) The fixing of the district which is to bear the expense of a local improvement and the mode in which such expense is to be borne and distributed are primarily legislative questions." It has long been settled that adjustments in such matters which are within the legislative discretion may be made subsequent to the organization of such corporate bodies and districts. (*Johnson* v. *City of San Diego,* 109 Cal. 468; *Palo Verde Irr. Dist.* v. *Seeley,* 198 Cal. 477.)

The legislature has been invested with an enlarged discretion by section 13 of article XI of the Constitution. Cogent reasons must therefore appear in support of objections urged against particular statutory provisions relat-

ing to the conduct of such districts enacted subsequent to the adoption of the constitutional amendment before the court would be justified in declaring them invalid. (*Wores* v. *Imperial Irrigation Dist.*, 193 Cal. 609, 622.)

Our conclusions herein are not opposed to the holding in the case of *Reclamation District* v. *Birks*, 159 Cal. 233, relied upon by the petitioners. The present case does not involve a "sale" of improvements from one district to another as was contemplated by the action of the trustees of the reclamation district in the cited case. It was held in the *Birks* case that one district may not acquire property of another and impose upon the property owners payment of the debts of the one from which the property has been acquired unless the land so burdened will derive a commensurate benefit therefrom. The result in that case has been obviated here by the action of the legislature declaring in effect that the lands so to be burdened have been or will be benefited by the transfer of the specified property. The same distinction supported the validity of an act which authorized the transfer of properties from a smaller to a larger district in the case of *Barber* v. *Galloway*, 195 Cal. 1. The case of *City of Redwood City* v. *Myers*, 7 Cal. (2d) 283, does not support the petitioners' position. That case involved the validity of the Municipal Investment Bond Act (Stats. 1915, p. 109), which purported to permit the municipality to levy an assessment for the purpose of issuing bonds the proceeds of which were to be used for purchasing and retiring improvement bonds of the city or its improvement districts. In line with the case of *Reclamation District* v. *Birks, supra*, it was held that the legislature was without the power to authorize the imposition of a tax upon all the lands in the municipality for the purpose of retiring a bond issue, the proceeds of which were to be used for purchase of such bonds; that the permanent purchase of bonds merely to effect their retirement and as a relief measure was not a beneficial use of the proceeds of the bond issue within the holding of the *Birks* case.

Our conclusion herein that the statute involved is valid also finds support in *Palo Verde Irrigation District* v.

Seeley, supra. In that case the writ of mandate directed the respondent to sign refunding bonds pursuant to the Palo Verde Irrigation District Act (Stats. 1923, p. 1067.) That act provided for the organization of the Palo Verde Irrigation District which comprised and joined the territory and functions of three former independent agencies, a levee district, a drainage district, and a mutual water company. The legislature expressly declared that all of the improvements of each former district were uniformly advantageous and beneficial to all the lands of the new district. The refunding bonds were issued pursuant to an amendment of 1925 (Stats. 1925, p. 637), for the purpose of redeeming the bonds of all three districts. The power of the legislature to authorize the imposition of the obligation upon the larger district to pay for improvements constructed within the smaller districts was upheld. The respondents there contended that in fixing the boundaries of the smaller district it must have been determined that the lands included therein only and no others were benefited by the works there constructed. But the contention was considered unavailing. The court said: "It may well happen that by the extension of the original plans lands which would not be benefited by the original construction work would derive a benefit not only from the additional improvement but from the original improvement as well." It is true that in that case the legislative declaration of benefit was express, but it is seen that the same effect should obtain where, as here, from the nature of the enactment, the implication that the legislature so found is unmistakable and unavoidable.

The statement in the case of *Van de Water* v. *Pridham*, 33 Cal. App. 252, 261, that there is a radical difference between the purposes of the Drainage Act and the Flood Control Act, the purpose of the former being to dispose of the water as an injurious element and of the latter to conserve it as a beneficial agent, is not necessarily inconsistent with the conclusions herein expressed. It is not difficult to perceive that the object to be attained by the legislation here questioned, namely, the combination of the functions

of drainage and flood control to the end that drai
waters may as well be conserved through the joint facil
of the drainage and flood control districts, is well w
the legislative power.

The peremptory writ is denied and the alternative
is discharged.

SHENK,

We concur:

LANGDON, *J.*
CURTIS, *J.*
WASTE, *C. J.*
SEAWELL, *J.*

(7537)